

### **REMARKS/ARGUMENTS**

In response to the Examiner's rejections, claim 2 has been amended as specified above. None of the amendments adds new matter.

#### ***Amendments in General***

Claim 2 has been amended to firstly further clarify that each side flange is attached at the top edge of one opposing side wall.

Claim 2 has also been amended to secondly further clarify that the side flanges are basically flat.

Claim 2 has also been amended to thirdly further clarify that each hole in a side flange "defines a basically-planar open area where said basically-planar open area is essentially parallel to said bottom."

Finally, claim 2 has been amended to clarify that clarify that the side flanges are "basically parallel to said bottom, . . . basically perpendicular to said opposing side walls and basically perpendicular to said back wall."

Support for these amendments is found throughout the specification and particularly in Figure 1 of the Application as filed. These amendments add no new matter to the specification and require no additional searching on the part of the Examiner. These amendments are intended to merely clarify positions that were already asserted by the Applicants.

#### ***Claim Rejections – 35 U.S.C. § 112, second paragraph***

The Examiner rejected claim 2 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that applicant regards at the invention. More specifically, the Examiner stated that he construed the word "generally," previously added to line 10 of claim 2, as equivalent to the term "usually" and inferring "alternativeness." The Examiner stated that "[t]he side flanges are always parallel to the bottom of the transport rack and are always perpendicular to the opposing sidewalls of the rack and not in certain situations."

Claim 2 has been amended to clarify the term "generally" by amending it to "basically." This clarifies that the side flanges are "basically parallel to said bottom, . . . basically perpendicular to said opposing side walls and basically perpendicular to said back wall." As used throughout claim 2, "basically," and previously "generally," is not an equivalent to "usually" but is rather used as being generally synonymous with "fundamentally," "essentially,"

“for the most part,” or “chiefly.” Thus, “basically,” and previously “generally,” refer to the general or basic configuration of the associated flange, bottom, side walls, and back wall.

Accordingly, Applicant respectfully contends that claim 2, as amended, particularly points out and distinctly claims the subject matter that Applicants regard as their inventions and, as such, does not violate 35 U.S.C. § 112, second paragraph.

### ***Claim Rejections § 103***

As the United States Supreme Court recently confirmed in *KSR International Co. v. Teleflex Inc.*, 550 U.S. \_\_\_\_ (Apr. 30, 2007), since its announcement in 1966, *Graham v. John Deere* has provided the controlling framework for an obviousness analysis under the patent law. Accordingly, a proper obviousness analysis requires a *Graham v. Deere* analysis rather than reliance on the old “*prima facie* case” test of *In re Vaeck*. Thus, it remains necessary to identify the reason why a person of ordinary skill in the art would have combined the prior art elements in the manner claimed. Further, in order to determine whether there was an apparent reason to combine known prior art elements in the fashion claimed by the application, the analysis should be made explicit. See *KSR* (citing *In re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006) (“[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning within some rational underpinnings to support the legal conclusion of obviousness.”)).

The Examiner’s obviousness analysis, which was prepared before the *KSR* opinion was handed down by the Supreme Court, apparently applied only the old “*prima facie* case” test of *In re Vaeck*, though the Examiner cited *Graham v. Deere*, and therefore did not include a *Graham v. Deere* analysis, including a discussion of the reason why a person of ordinary skill in the art would have combined the cited prior art elements. Accordingly, the Applicant respectfully requests that the Examiner withdraw the obviousness rejections and reconsider the application in light of the *KSR* opinion.

However, in light of the amendments to claim 2, the claims are not obvious over the cited references regardless of whether one applies the *Graham v. Deere* analysis or the old “*prima facie* case” test of *In re Vaeck*, for the reason that the references, when combined, do not include each of the limitations of the claims.

Section 706.02(j) of the MPEP sets forth the old requirements for establishing the *prima facie* case of obviousness as follows:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the

art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on the applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

In this case, claim 2 is the only independent claim and all other claims depend from claim 2. Accordingly, the limitations of claim 2, as amended, are included in all of the pending claims. Further, if claim 2 is nonobviousness, then the other claims are likewise nonobvious. Accordingly, for the sake of brevity, the Examiner's rejections as to claim 2 will be addressed specifically, as overcoming those rejections necessarily makes the rejections to the other claims moot.

In light of the amendments to claim 2, the references, when combined do not include all the claim limitations of the claims because they do not include the limitations of claim 2, particularly in light of the amendments thereto.

### **Claim 2 Rejection Based on Temple and Spencer**

The Examiner rejected claim 2 under 35 U.S.C. § 103(a) as being unpatentable (obvious) over the display rack described in U.S. Patent No. 2,680,522 (the Temple patent) in view of the instrument cassette described in U.S. Patent No. 5,759,502 (the Spencer patent). The Examiner contends that modifying the display rack to include the instrument cassette would result in the present invention, with each and every element thereof.

Claim 2 has been amended to clarify that (1) each side flange is attached at the top edge of one opposing side wall; (2) the side flanges are basically flat; (3) each hole in a side flange "defines a basically-planar open area where said basically-planar open area is essentially parallel to said bottom"; and (4) the side flanges are "basically parallel to said bottom, . . . basically perpendicular to said opposing side walls and basically perpendicular to said back wall."

#### **1. Each side flange is attached at the top edge of one opposing side wall**

The Examiner contends that the "entire side wall 18 and 17 in figure 4" constitutes "opposing side walls" and that "the unlabeled top part of 28 in figure 3 that extends horizontally as to being part of 18 and 17" constitutes a "pair of horizontally disposed flanged attached to the tops of the opposing side walls . . . ." (*April 3, 2007, Office Action*, page 4). The Applicants disagree. Regardless, Temple does not include the limitation of claim 2 as amended of having flanges attached as the top edge of the opposing side walls. Rather, "the unlabeled top part of 28

in figure 3 that extends horizontally as to being part of 18 and 17” is apparently attached at another unlabeled portion of 28, not to any part of the alleged “opposing side walls,” i.e., the “entire side wall[s] 18 and 17 in figure 4.” Accordingly, even if “the unlabeled top part of 28 in figure 3 that extends horizontally as to being part of 18 and 17” constitutes a “part of horizontally disposed flange[s],” they are not attached at the top edge of the alleged opposing side walls. Thus, Temple does not include each and every limitation of claim 2 as amended.

Likewise, the instrument cassette of Spencer does not include this limitation. Nor is this limitation included in any of the other cited references.

**2. The side flanges are basically flat**

Even if “the unlabeled top part of 28 in figure 3 that extends horizontally as to being part of 18 and 17” constitutes a flange, that part is not “basically flat.” To the contrary, the referenced “unlabeled top part of 28 in figure 3” is a wire, and, as such, is not “basically flat.” For these reasons, Temple does not include this limitation of claim 2 as amended.

Likewise, the instrument cassette of Spencer does not include this limitation. Nor is this limitation included in any of the other cited references.

**3. Each hole in the side flange “defines a basically-planar open area where said basically-planar open area is basically parallel to said bottom”**

The Examiner contends that Temple includes the limitation of flanges having a hole therein because “28 in figure 3 has unlabeled hole within it.” The Applicants disagree with this belief, particularly because the Examiner earlier contended that “the unlabeled top part of 28 in figure 3 that extends horizontally as to being part of 18 and 17” constituted the alleged “flanges,” and has not contended that that “unlabeled top part” has a hole therein. Rather, the Examiner contends there is a hole within 28 in figure 3, though the Examiner did not contend that 28 in figure 3 constitutes a “flange,” and we agree that the Examiner should not make such a contention.. Regardless, even if the unlabeled hole within 28 in figure 3 constitutes a hole in a flange, the hole does not define a “basically-planar open area where said basically-planar open area is basically parallel to said bottom.” To the contrary, the only basically-planar area that could be defined by the alleged “unlabeled hole within” “28 in figure 3” is a basically-planar open area that is perpendicular to the bottom of the rack. Accordingly, Temple does not include this limitation of claim 2 as amended.

Likewise, the instrument cassette of Spencer does not include this limitation. Nor is this limitation included in any of the other cited references.

4. **The side flanges are “basically parallel to said bottom, . . . basically perpendicular to said opposing side walls and basically perpendicular to said back wall.”**

Again, even if “the unlabeled top part of 28 in figure 3 that extends horizontally as to being part of 18 and 17” constitutes a flange, while that part is “basically parallel to said bottom and basically perpendicular to said opposing side walls, it is not “basically perpendicular to said opposing side walls.” The Examiner contends that the referenced wire is “perpendicular to the opposing side wall” because “part of side wall 18 in figure 3 is 26a that is labeled as vertical member in figure 3.” However, the wire’s being perpendicular to a “part of [the] side wall” does not constitute its being “basically perpendicular to the wall. Being perpendicular to a part of something does not equate to being basically perpendicular to the whole of something. Accordingly, Temple does not include this limitation of claim 2 as amended.

Likewise, the instrument cassette of Spencer does not include this limitation. Nor is this limitation included in any of the other cited references.

For the foregoing reasons, neither Temple nor Spencer, nor Temple and Spencer combined, includes the aforementioned limitations of claim 2 as amended. Accordingly, Applicants respectfully contends that claim 2, as amended, and thus the other pending claims, are not obvious over Temple in view of Spencer.

**Claim 2 Rejection Based on Ochs and Spencer**

The Examiner also rejected claim 2 under 35 U.S.C. § 103(a) as being unpatentable (obvious) over the storage rack described in U.S. Patent No. 3,007,708 (the Ochs patent) in view of the instrument cassette described in the Spencer patent. The Examiner contends that modifying the storage rack to include the instrument cassette would result in the present invention, with each and every element thereof.

Again, claim 2 has been amended to clarify that (1) each side flange is attached at the top edge of one opposing side wall; (2) the side flanges are basically flat; (3) each hole in a side flange “defines a basically-planar open area where said basically-planar open area is essentially parallel to said bottom”; and (4) the side flanges are “basically parallel to said bottom, . . . basically perpendicular to said opposing side walls and basically perpendicular to said back wall.”

1. **Each side flange is attached at the top edge of one opposing side wall**

The Examiner apparently contends that 12 in figure 1 constitutes the opposing side walls of Ochs and that the “horizontal bars 27 in side walls 12 of figure 1” constitute the “pair of

horizontally extending side flanges.” The Applicants disagree. Regardless, Ochs does not include the limitation of claim 2 as amended of having flanges attached as the top edge of the opposing side walls. Rather, the “horizontal bars 27 in side walls 12 of figure 1” are incorporated within the side walls and have no contact with the top edge of the side wall and thus are not attached at the top edge of the side walls. Accordingly, even if “the horizontal bars 27 in side walls 12 of figure 1” constitute a “part of horizontally disposed flange[s],” they are not attached at the top edge of the alleged opposing side walls. Thus, Ochs does not include each and every limitation of claim 2 as amended.

Likewise, the instrument cassette of Spencer does not include this limitation. Nor is this limitation included in any of the other cited references.

**2. The side flanges are basically flat**

Even if “the horizontal bars 27 in side walls 12 of figure 1” constitutes flanges, that part is not “basically flat.” To the contrary, the referenced “horizontal bars” are basically wires, and, as such, is not “basically flat.” For these reasons, Ochs does not include this limitation of claim 2 as amended.

Likewise, the instrument cassette of Spencer does not include this limitation. Nor is this limitation included in any of the other cited references.

**3. Each hole in the side flange “defines a basically-planar open area where said basically-planar open area is basically parallel to said bottom”**

The Examiner contends that Ochs includes the limitation of flanges having a hole therein because the “hole within the side flange of unlabeled horizontal bars in side walls 12 of figure 1 connected vertically to each other with hooks 21 . . . .” Apparently, the Examiner contends that the square open space between the horizontal and vertical bars of side walls 12 constitutes the holes in the flanges. The Applicants disagree with this belief, particularly because the alleged “holes” are not in the alleged “flanges,” but are holes in the side walls. Regardless, even if the “hole within the side flange of unlabeled horizontal bars in side walls 12 of figure 1 connected vertically to each other with hooks 21” constitutes a hole in the flange, that hole does not define a “basically-planar open area where said basically-planar open area is basically parallel to said bottom.” To the contrary, the only basically-planar area that could be defined by such an alleged hole is a basically-planar open area that is perpendicular to the bottom of the rack. Accordingly, Ochs does not include this limitation of claim 2 as amended.

Likewise, the instrument cassette of Spencer does not include this limitation. Nor is this limitation included in any of the other cited references.

4. **The side flanges are “basically parallel to said bottom, . . . basically perpendicular to said opposing side walls and basically perpendicular to said back wall.”**

Again, even if “the horizontal bars 27 in side walls 12 of figure 1” constitutes flanges,, while that part is “basically parallel to said bottom and basically perpendicular to said opposing side walls, it is not “basically perpendicular to said opposing side walls.” The Examiner contends that the referenced wire is “perpendicular to [the] opposing side walls” because “horizontal bars 27 in figure 1 are perpendicular to posts 9, which are part of side walls 12 . . . .” However, the bars’ being perpendicular to a part of the side wall does not constitute its being “basically perpendicular to [the] opposing side walls.” Being perpendicular to a part of something does not equate to being basically perpendicular to the whole of something. Accordingly, Ochs does not include this limitation of claim 2 as amended.

Likewise, the instrument cassette of Spencer does not include this limitation. Nor is this limitation included in any of the other cited references.

For the foregoing reasons, neither Ochs nor Spencer, nor Ochs and Spencer combined, includes the aforementioned limitations of claim 2 as amended. Accordingly, Applicants respectfully contends that claim 2, as amended, and thus the other pending claims, are not obvious over Ochs in view of Spencer.

In conclusion, because neither Temple, nor Ochs, nor Spencer, nor the combination of Temple and Spencer, nor the combination of Ochs and Spencer includes the aforementioned limitations of claim 2, the references do not include the limitations of the pending claims. Therefore, the Applicants respectfully contend that the claims are not obvious over Temple in view of Spencer nor obvious over Ochs in view of Spencer. As such, the Examiner’s other references and rejections need not be specifically discussed as they are moot.

***Conclusion***

None of the amendments made herein add new matter.

If the Examiner feels it would advance the application to allowance or final rejection, the Examiner is invited to telephone the undersigned at the number given below.

Reconsideration and allowance of the application as amended is respectfully requested.

DATED this 3rd day of August, 2007.

Very respectfully,

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